

*Electronically Filed on:
February 12, 2007*

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Attorneys for Fertitta Enterprises, Inc.,
and designated Nevada counsel for Estate of Tabas

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
Debtor.

USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

USA SECURITIES, LLC,
Debtor.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

Chapter 11
**DECLARATION OF JANET L.
CHUBB IN SUPPORT OF REPLY
OF ESTATE OF DANIEL TABAS
AND FERTITTA ENTERPRISES,
INC., TO DEBTORS'
OPPOSITION TO MOTION FOR
RELIEF FROM THE
AUTOMATIC STAY TO
TERMINATE THE LOAN
SERVICING AGREEMENT FOR
THE DIRECT LOAN TO COLT
GATEWAY LLC**

Hearing Date: February 15, 2007
Hearing Time: 9:30 am

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1 I, JANET L. CHUBB, declare pursuant to 28 U.S.C. § 1746(2), that:

2 1. With the exception of those matters stated upon information and belief, I have
3 personal knowledge of each of the matters stated herein and could testify competently to the same
4 under oath in a court of law if called upon.

5 2. I am counsel for Fertitta Enterprises, Inc., and designated Nevada counsel for the
6 Estate of Daniel Tabas. I also am a member in good standing licensed to practice before all state
7 and federal courts in the State of Nevada.

8 3. On February 7, 2007, the parties participated in a teleconference involving Fertitta's
9 chief financial officer, William J. Bullard; Tom Allison and Bob Koe for the debtors; Annette
10 Jarvis, counsel for the debtors; Jonathan Bart, lead counsel for the Estate of Tabas; and Louis
11 Bubala and myself, counsel for Fertitta and designated Nevada counsel for the Estate of Tabas.

12 4. During the teleconference, Mr. Allison stated he had reached an agreement with the
13 borrower to pay the direct lenders in full on the Colt Gateway loan.

14 5. Mr. Allison agreed to provide the written terms of the agreement as well as a
15 payoff letter to Fertitta and the Estate of Tabas.

16 6. To date, Fertitta and the Estate of Tabas have not received anything written from
17 Mr. Allison or debtors.

18 7. Mr. Bart, lead counsel for the Estate of Tabas, has spoken with Colt Gateway's
19 counsel, and Colt Gateway's counsel informed Mr. Bart that it is ready and willing to pay off the
20 loan.

21 8. Mr. Bullard and I reviewed the plan prior to filing the motion and were unaware
22 that debtors asserted that the plan transferring the loan-servicing rights to Diversified.

23 9. After the Court denied the motion for an order shortening time, I inquired with
24 counsel for the Diversified Committee as to the basis of the "transfer."

25 10. Mr. Hermann sent me an email that directed me to Plan Section IV.D.2 concerning
26 the post-effective-date form of Diversified Trust Deed Fund, as evidenced by the true and accurate
27 copy of the email attached as Reply Ex. 5, 1/20/07 Hermann-Chubb email.

28

CERTIFICATE OF SERVICE

1. On February 12, 2007, I served the following document(s):

**DECLARATION OF JANET L. CHUBB IN SUPPORT OF REPLY OF ESTATE OF
DANIEL TABAS AND FERTITTA ENTERPRISES, INC., TO DEBTOR'S OPPOSITION
TO MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO TERMINATE THE
LOAN SERVICING AGREEMENT
FOR THE DIRECT LOAN TO COLT GATEWAY LLC**

2. I served the above-named document(s) by the following means to the persons as listed below:

■ a. **ECF System** (attach the "Notice of Electronic Filing" or list all persons and addresses):

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■ b. **United States mail, postage fully prepaid** (list persons and addresses):

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USA COMMERCIAL MORTGAGE ET AL.
4484 SOUTH PECOS ROAD
LAS VEGAS, NV 89121

9 c. **Personal Service** (list persons and addresses):
I personally delivered the document(s) to the persons at these addresses:

9 For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

9 For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

■ d. **By direct email (as opposed to through the ECF System)** (list persons and email addresses):

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Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time

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after the transmission, any electronic message or other indication that the transmission was unsuccessful.

9 e. **By fax transmission** (list persons and fax numbers):

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

9 f. **By messenger:**

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed blow and providing them to a messenger for service. (A declaration by the messenger must be attached to this Certificate of Service).

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 12th day of February, 2007.

C. Grinstead _____ Name	//s// C. Grinstead _____ Signature
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